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TOM LEE  
President

ALLEN BENSE  
Speaker



STATE OF FLORIDA  
OFFICE OF PUBLIC COUNSEL



c/o THE FLORIDA LEGISLATURE  
111 WEST MADISON ST.  
ROOM 812  
TALLAHASSEE, FLORIDA 32399-1400  
850-488-9330

Harold McLean  
Public Counsel

EMAIL: OPC\_WEBSITE@LEG.STATE.FL.US  
WWW.FLORIDAOPC.GOV

Charles J. Beck  
Deputy Public Counsel

January 28, 2005

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RECEIVED  
D. FPSC  
05 JAN 28 PM 3:09  
COMMISSION  
CLERK

Re: Docket No. 050018-WU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced dockets are the original and 15 copies of Citizens' Response to Aloha's Objection to Dr. Kurien's Status as an Intervenor.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_ CJB:bsr  
OPC \_\_\_\_\_ Enclosures  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_ cc: All parties of record  
SCR \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH +cover ltr  
kim

DOCUMENT NUMBER - DATE  
01044 JAN 28 05

CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Initiation of deletion proceedings against )  
Aloha Utilities, Inc. for failure to provide )  
sufficient water service consistent with the ) Docket 050018-WU  
reasonable and proper operation of the ) Date filed: January 28, 2005  
utility system in the public interest, in violation )  
of Section 367.111(2), Florida Statutes. )  
-----)

**CITIZENS' RESPONSE TO ALOHA'S OBJECTION  
TO DR. KURIEN'S STATUS AS AN INTERVENOR**

Florida's Citizens ("Citizens") file this response to the pleading entitled "Objection to Request for Intervenor Status and Designation as a Party by Abraham Kurien " filed by Aloha Utilities, Inc. ("Aloha") on January 24, 2005.

1. At its agenda conference held on January 4, 2005, the Florida Public Service Commission voted to open a new docket for the deletion proceeding against Aloha, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), Florida Statutes, and, at the expiration of that 30 days, issue an Order to Show Cause to initiate the deletion proceeding and to provide a point of entry for Aloha to request a hearing<sup>1</sup>. On January 6, 2005, staff established docket 050018-WU to take the actions directed by the Commission. On January 14, 2005, the Commission received a letter from Dr. V. Abraham Kurien requesting intervenor status in the proceeding.

<sup>1</sup> Commission vote sheet dated January 4, 2005, document 00115-05 in docket 020896-WS.

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FPSC-COMMISSION

2. Much of Aloha's objection rests on the notion that Dr. Kurien's letter requesting intervenor status dated January 11, 2005, fails to comply with Rule 28-106.205 or Rule 25-22.039, Florida Administrative Code. These concerns, however, are met by the petition to intervene the Commission received from Dr. Kurien on January 26, 2005. Aloha's concerns about compliance with these rules are therefore moot.

3. Aloha's objection further implies that because the Commission is the initiator of the docket and that Aloha may request a hearing in response to the Commission's show cause order, that somehow translates into the inability of a party with a substantial interest to intervene in this proceeding<sup>2</sup>. Aloha cites no law for this proposition, and with good reason. Aloha's arguments are simply irrelevant to the issue of intervention. Once a person with a substantial interest petitions for intervention and meets the requirements of the rules, they are entitled to intervene.

4. Finally, it was apparent at the agenda conference held on January 24, 2005, that the Commission contemplated participation by customers in this proceeding. The following comments were made by Commissioners and staff:

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<sup>2</sup> With regard to the issue of whether the opening of a docket to implement the stated will of the Commission is a "proceeding," Citizens adopt the arguments contained in Citizens Response to Aloha's Objection to Public Counsel's Status as an Intervenor filed today.

(COMMISSIONER DEASON)

9 "Now even though we would be terminating the  
10 proceeding that was filed by the customers, they would still  
11 have standing to actively pursue their interest, even though it  
12 becomes a PSC-initiated proceeding; isn't that correct?

13 MS. CIBULA: I believe that they could participate.  
14 But it would be the Commission staff that would be prosecuting  
15 the case, and I guess they can use the evidence that is  
16 presented by the customers in support.

17 **COMMISSIONER DEASON:** But the customers have standing  
18 to present evidence, to present argument, do they not?

19 MS. CIBULA: I think that the, the Commission staff,  
20 as the prosecutor, would decide what evidence to put on in the  
21 case.

22 **COMMISSIONER DEASON:** Now that's troubling to me,  
23 okay, because, because -- and this kind of goes back to, I  
24 think, a question that the Chairman had about the status that  
25 customers have because it's basically their service that is at

15

1 stake, their interest is at stake, and that's what we're trying  
2 to protect. And it seems to me that they need to have full  
3 opportunity to present their viewpoints in some manner or

3

--

4 another, either through testimony or argument or both. And,  
5 and I need some type of assurance before I terminate this  
6 proceeding. Even if this is the wrong proceeding, I mean,  
7 there's got to be an avenue for customers to fully participate.  
8 I need some assurance that that's going to take place.

9 MS. CIBULA: I believe that they would participate,  
10 but I believe that the ultimate burden of proof would be on the  
11 Commission staff as the prosecutor.

12 CHAIRMAN BAEZ: And the two notions, just so that I'm  
13 clear -- I think that's a good question. But the two notions  
14 can, are, are, can exist independent of each other; is that, is  
15 that fair to say? I mean, Public Counsel, and, again, we're  
16 seeking hypothetically, that's for another issue, for another  
17 item obviously, but hypothetically speaking, Public Counsel, I  
18 think to Commissioner Deason's question, Public Counsel would,  
19 would and could have standing to, to be involved. They would  
20 have a right to cross-examine witnesses as part, as part of the  
21 process. It's only rather that the, that the Commission staff  
22 or the prosecution staff has the burden.

23 MR. MELSON: Commissioner, I think you're correct.  
24 The statute gives Public Counsel a right to participate in any  
25 Commission proceeding as a matter of right. I think the -- if

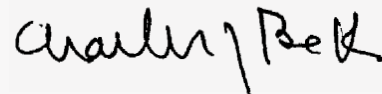
1 you have petitions to intervene by individual customers, I  
2 would suspect that they have standing. I'd encourage you not  
3 to try to cross that bridge today because if we get a petition  
4 to intervene and an objection by the utility, we don't want to  
5 prejudge without hearing all the arguments. But at least  
6 through the Office of Public Counsel the customers do have a  
7 right to be represented in any, in any Commission proceeding."

Dr. Kurien has now filed a petition to intervene in compliance with Rule 28-106.205 and Rule 25-22.039, Florida Administrative Code, and his petition should be granted.

**WHEREFORE**, Citizens respectfully request the Commission to deny the objection of Aloha and to issue an order granting intervenor status to Dr. V. Abraham Kurien.

Respectfully submitted,

HAROLD MCLEAN  
PUBLIC COUNSEL



Charles J. Beck  
Deputy Public Counsel  
Florida Bar no. 217281

Office of Public Counsel  
c/o The Florida Legislature

111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

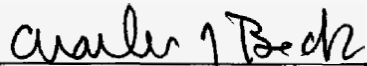
(850) 488-9330

Attorneys for Florida's Citizens

**DOCKET NO. 050018-WU  
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 28th day of January, 2005.

  
\_\_\_\_\_  
Charles J. Beck

Rosanne Gervasi, Esquire  
Division of Legal Services  
Fla. Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

F. Marshall Deterding, Esquire  
John Wharton, Esquire  
Rose, Sundstrom and Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

Mr. Harry Hawcrof  
1612 Boswell Avenue  
New Port Richey, FL 34655

V. Abraham Kurien, M.D.  
1822 Orchardgrove Avenue  
New Port Richey, FL 34655

Edward O. Wood  
1043 Daleside Lane  
New Port Richey, FL 34655

Senator Mike Fasano  
217 Massachusetts Avenue  
New Port Richey, FL 34653

Aloha Utilities, Inc.  
Mr. Stephen G. Watford  
6915 Perrine Ranch Road  
New Port Richey, FL 34655-3904

John H. Gaul, Ph.D.  
7633 Albacore Drive  
New Port Richey, FL 34655

Wayne T. Forehand, Chairman  
Citizens' Advisory Committee  
1216 Arlinbrook drive  
Trinity, FL 34655-4556

James Mitchell, Jr.  
Riviera Home Owners Association  
5957 Riviera Lane  
New Port Richey, FL 34655

Ann Winkler  
Riverside Village Estates, Unit 4  
4417 Harney Court  
New Port Richey, FL 34655

John Parese  
Riverside Villas  
4029 Casa del Sol Way  
New Port Richey, FL 34655